HONOURABLE MS JUSTICE G.ROHINI

WRIT PETITION No. 23077 of 2006

Dated 12th July 2007

Between:

M/s.Kandukrui Oil Industries Private Ltd.,
(rep. by its Managing Director Sri K.Ramulu,
Chandular Bowli, Sikh village,
Secunderabad-500 009.

.....Petitioner

and

The Deputy General Manager,
State Bank of India, Stressed Assets Management (SAM) Branch,
Secunderabad- 5000043 and others.

.....Respondents.

HONOURABLE MS JUSTICE G.ROHINI

WRIT PETITION No. 23077 of 2006

ORDER:

This writ petition is filed seeking a declaration that the action of the 1st respondent bank in not considering the petitioner's offer for one time settlement of its loan account, as arbitrary and illegal.

It is not in dispute that the petitioner-company had availed a secured loan of rupees three crores from the respondent bank against the security of industrial land in Bhainsa, Adilabad District apart from a house property situated in Secunderabad. Since the petitioner company committed default in repayment of the loan amounts, the respondent bank filed O.A.No.2 of 2000 in the Debts Recovery Tribunal (DRT), Hyderabad for recovery of the amounts due. The petitioner contested the said proceedings and also filed a counter claim on the ground

that since the respondent bank had gone back from its commitment, the petitioner company suffered heavy losses. The said proceedings are still pending.

While so in response to a proposal made by the respondent bank for one time settlement for Rs.1.90 crores, the petitioner company paid Rs.15 lakh and sought extension of time for payment of balance amounts. However, the respondent bank vide notice dated

07-02-2006, called upon the petitioner to pay the balance OTS amount of Rs.1.75 crores by 15.2.2006, failing which the offer would stand cancelled. Thereafter by letter dated 21.9.2006, the respondent bank while stating that the OTS offer stands cancelled informed the petitioner that the properties mortgaged would be put to sale unless the petitioner agrees to improve the offer to the extent of realizable value of available security. Having received the same, the petitioner sought extension of time up to 31.01.2006 for payment of balance amount under OTS. However, there was no response from the respondent. Hence, this Writ Petition.

In response to the Rule Nisi ordered, a counter affidavit has been filed on behalf of the respondents stating that since the petitioner company committed

default in paying the amounts agreed under OTS vide proceedings dated 21.9.2006 the OTS offer was cancelled.

I have heard the learned counsel for both the parties.

From the material placed before this Court, it is clear that O.A.No.2 of 2000 is pending before the Debt Recovery Tribunal for recovery of the amounts allegedly due from the petitioner company. Since the petitioner herein is contesting the said claim and also made a counter claim, it is for the parties to establish their respective claims before the Tribunal. Admittedly the respondent bank has not yet invoked the provisions of the Securitisation Act and therefore, it is not open to the respondents to enforce the secured assets straight away. At any rate, it is not the case of the either party that any steps have been initiated for sale of the mortgaged property. The only grievance of the petitioner in this Writ Petition is that the 1st respondent was not justified in canceling the OTS offer. The law is well settled that the One Time Settlement does not confer any enforceable legal right on the borrower particularly where the borrower himself could not adhere to the terms and conditions of

the OTS.

At any rate the OTS account is nothing but a compromise between two parties to contract. As such in case of any default by one of the parties, the other party would be justified in cancelling the contract itself and such action cannot be held to be arbitrary or illegal. So far as the mortgaged properties are concerned as expressed above, the respondents cannot proceed against the same without following due process of law.

The Writ Petition is accordingly disposed of making it clear that the respondent shall not deal with the mortgaged properties in any manner whatsoever without following due process of law. No costs.

(G.ROHINI, J)

Date:12-07-2007
mrb